



U.S. Customs and
Border Protection

JUN 27 2018

DIS-3 OT:RR:RDL:FAPL
CBP-AP-2018-063518 GRV

Mr. Oscar O. Osorio Alfaro
3333 Leesville Towns Court
Raleigh, NC 27613

Dear Mr. Alfaro:

This letter is the appeal determination in response to your FOIA Online information request submitted June 12, 2018 that appeals the June 7, 2018 initial response (CBP-2018-040611) of the FOIA Processor (Processor), Privacy and Diversity Office, Customs and Border Protection (CBP), Department of Homeland Security (DHS), that, in effect, denied (6 CFR §5.6(c)) your March 20, 2018 initial information request, pursuant to the Freedom Of Information Act (FOIA) (5 U.S.C. § 552), for a copy of your entry record (I-94) from November 20, 2000 through the port of Houston, TX.

Although the Processor disclosed an I-94, you claim that the information disclosed doesn't belong to you and request another search for the entry document you requested.

For the reasons that follow, your appeal is **GRANTED**; CBP's initial response is **Modified**; 1 TECS¹ screen-print record of your entry information, with certain

¹ TECS used to be an acronym for the Treasury Enforcement Communications System (TECS), but is now principally owned and managed by CBP—in 2003, CBP became a component agency within the Department of Homeland Security. See, 66 Fed.Reg. 52984 (October 18, 2001), at 53029; and, 73 Fed.Reg. 77778 (December 19, 2008). The TECS constitutes "CBP's principal law enforcement and anti-terrorism database system, and it is one of the primary tools that CBP law enforcement officers ... regularly use[] in order to effectively and efficiently enforce all particular laws, particularly [relating] to travelers and trade crossing the border into or out of the United States." *Strunk v. DOS*, 905 F.Supp.2d 142, at p. 7 (D.D.C. 2012). The TECS is an overarching law enforcement information collection, analysis, and sharing environment that securely links telecommunications devices and personal computers to a central system and database. This environment is comprised of several modules designed to collect, maintain, and screen data as well as conduct analysis, screening, and information sharing. The TECS databases contain temporary and permanent enforcement, inspection and intelligence records—that are reproduced as screen-prints of data searched—relevant to the antiterrorism and law enforcement mission of CBP and numerous other federal agencies that it supports.

information redacted—the information being exempt from disclosure—pursuant to 1 or more of 2 applicable FOIA exemptions², is enclosed with this appeal determination. Regarding certain personal information withheld in the record now disclosed, because it pertains to 3rd-parties, i.e., information pertaining to other persons privacy, not 1st-party information, i.e., information pertaining to your privacy, it is **noted** that you have not made any showing of any genuine public interest³ concerning why such 3rd-party PII should be disclosed.

The FOIA, in general

The FOIA "was enacted to facilitate public access to Government documents." U.S. Dep't of State v. Ray, 502 U.S. 164, 173 (1991). The predominant objective of the FOIA is the disclosure of executive branch information that is maintained by the federal government to the public unless the requested records contain certain categories of information that are exempt or excluded from compelled disclosure; FOIA provides nine exemptions and three exclusions pursuant to which an agency may withhold requested information. Thus, the public's right to government information is not without limits. However, FOIA exemptions are to be narrowly construed, and the burden is on the government to demonstrate that the materials sought may be withheld due to one or more of the exemptions. When requested records contain exempt information, the reasonably segregable portion of the record must be disclosed, i.e., the non-exempt portion must be disclosed unless it is inextricably intertwined with the exempt information.⁴ An agency also has the burden of detailing what proportion of the

² Exemptions (b)(6) and (b)(7)(C) (5 U.S.C. §§ 552(b)(6) and (b)(7)(C)), commonly referred to as 3rd-party 'personal privacy' exemptions, pertain to personal identification information (PII) in different contexts, the former provision protects the names of individuals the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, the latter protects the names of individuals that are contained in records compiled for law enforcement purposes, as disclosure of this information would constitute an unwarranted invasion of personal privacy—these exemptions cannot be invoked to withhold from a requester information pertaining only to themselves, i.e., not 1st-parties.

³ The 'public interest' factor argues in favor of disclosure under the FOIA; it must be a showing that the agency is engaged in illegal activity; more than a bare suspicion of official misconduct must be made and the 'public interest' balancing does not include helping an individual obtain information for his/her personal use. See Lazaridis v. U.S. Dep't of Justice, 766 F.Supp.2d 134 (D.D.C. 2011) at pg. 11, citing Oguaju v. U.S., 288 F.3d 448, 450 (D.C.Cir. 2002), *vacated and remanded on other grounds*, 541 U.S. 970, 124 S.Ct. 1903, 158 L.Ed.2d 464 (2004), *reinstated*, 378 F.3d 1115 (D.C.Cir.2004) (citation omitted). A showing of "public interest" is a material consideration in applying two of the FOIA Exemptions found applicable in this matter—(b)(6) and (b)(7)(C)—as its presence aids in determining whether the information withheld should be disclosed. See Multi Ag Media LLC v. USDA, 515 F.3d 1224 (D.C.Cir. 2008) (discussing FOIA Exemption (b)(6)); and, SafeCard Svcs, Inc. v. SEC, 926 F.2d 1197 (D.C.Cir. 1991) (discussing FOIA Exemption (b)(7)(C)).

⁴ The FOIA requires that "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt." 5 U.S.C. § 552(b). More specifically, "[i]t has long been a rule in this Circuit that non-exempt portions of a document must be disclosed unless they are inextricably intertwined with exempt portions." Mead Data Central, Inc. v. U.S.

information in a document is nonexempt and how that material is dispersed throughout the document. See, Ray decision, *supra*; FBI v. Abramson, 456 U.S. 615, 621 (1982); and, Barnard, M.D. v. Dep't of Homeland Security, 598 F.Supp.2d 1, at pg. 5 (D.D.C. 2009). See also 6 CFR § 5.6(b), which mandates, in part, that records disclosed in part shall be marked or annotated to show the amount and location of information deleted.

Third-Party Personal Privacy Exemptions: (b)(6) & (b)(7)(C)

Both Exemption 6 and Exemption 7(C) protect an individual's privacy interest when balanced against the public interest in disclosure. These exemptions serve to protect 3rd-party's "privacy", i.e., the privacy exemptions in general cannot be invoked to withhold from a requester information pertaining only to themselves, i.e., employed against a 1st-party requester for his/her own information; they normally serve to protect other individuals', i.e., 3rd-party's, PII. Both exemptions require the balancing of 3rd-party privacy interests against any asserted significant public interests that may warrant its disclosure. The analysis is the same under both exemptions. Lewis v. U.S. Dep't of Justice, 609 F.Supp.2d 80, 84 (D.D.C. 2009). Although the protection available under these exemptions is not the same, the same balancing standard applies; the two exemptions differ in the "magnitude of the public interest that is required," not in the "identification of the relevant public interest." DOD v. FLRA, 510 U.S. 487, 496-97 & n.6 (1994).

In this matter, some information contained on the TECS record now disclosed constitutes 3rd-party privacy information; the type of information that qualifies for Exemption (b)(7)(C)—and (b)(6)—protection. The PII is located where the Header 'Generated By:' and 'Inspector Name' are denominated, and consists of the names or other personally identifying information, such as badge numbers, etc., of specific CBP employees; the information withheld is not narrative information nor does it pertain directly or indirectly to you. Thus, the threshold requirement for this privacy exemption is met and we find that you have not asserted any public interest in disclosing this information. Accordingly, the PII withheld pursuant to FOIA Exemption (b)(7)(C)—and (b)(6)—is properly withheld from you.

If you believe that this review of your request for an appeal does not adequately respond to your request, you may pursue judicial review of this agency decision pursuant to 5 U.S.C. §552(a)(4)(B) in the U.S. District Court in the district in which you reside or have a principal place of business, or in the U.S. District Court for the District of Columbia.

Dep't of the Air Force, 566 F.2d 242, 260, 184 U.S. App. D.C. 350 (D.C.Cir. 1977); and, ACLU of Southern California v. U.S. Citizenship and Immigration Svcs, 133 F.Supp.3d 234 (D.D.C. 2015). District Courts have an affirmative duty to consider segregability and must make specific findings of segregability. Stolt-Nielsen Transp. Group, Ltd. v. United States, 534 F.3d 728, 734 (D.C.Cir. 2008).

Alternatively, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You can contact OGIS in any of the following ways:

By writing -National Archives and Records Administration
8601 Adelphi Road (OGIS)
College Park, MD 20740-6001

By E-mail - ogis@nara.gov

By Telephone - 202-741-5770 - Toll-free: 1-877-684-6448

By Facsimile - 202-741-5769

Sincerely,



Shari Suzuki, Chief
FOIA Appeals, Policy, and Litigation Branch
Office of Regulations & Rulings
Office of International Trade
U.S. Customs and Border Protection

Enclosure – a 1-page TECS screen-print page with some information redacted